

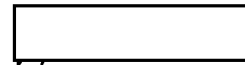


DEPARTMENT OF STATE

Washington, D C. 20520

D. Silver

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June 25, 1979

TO: The General Counsel's Working Group

Following the recent meeting between Secretary Vance and Senators Huddelston and Mathias, Bill Miller provided us with the attached text of Sections 221 through 226.

We have orally advised Bill that, although the Secretary is personally sympathetic to the view expressed in their text, the Administration has taken a somewhat different approach.

Jeffrey H. Smith  
Deputy Assistant Legal Advisor

Attachment:  
Text of Sections 221 thru 226.

SENATE SELECT COMMITTEE ON INTELLIGENCE DRAFT 6/11/79

Part \_\_\_\_\_. Special Activities

Purpose

Sec. 221. Special activities shall be undertaken only to meet exceptional circumstances affecting the vital interests of the United States. This part establishes standards and procedures to ensure that special activities are undertaken only for such purposes.

Conduct of Special Activities

Sec. 222. (a) Special activities may be conducted only by the Central Intelligence Agency.

(b) Support for any special activity may be provided by any department or agency if the President finds in writing that the intended United States objective is not likely to be achieved without such support.

Authorization for Special Activities

Sec. 223. Special activities shall be reviewed and approved only as follows:

(a) Special activities shall be authorized by the President.

(1) Authorization for each special activity that involves substantial resources, risks, or consequences in the event of disclosure shall require a finding by the President that each such special activity is essential to the national security of the United States.

(2) Authorization for any other special activities shall require a finding by the President that the category or type of special activities is essential to the national security. The National Security Council shall be responsible for the conduct of each such activity and shall ensure that it is consistent with all portions of the Presidential finding.

(3) In authorizing special activities under (1) or (2), the President must find that:

- (A) overt or less sensitive alternatives would not be likely to achieve the intended objective;
- (B) such activities are consistent with aims, values, and policies of the United States; and
- (C) the anticipated benefits of such activities justify the foreseeable risks and likely consequences.

(b) Approval of special activities shall be preceded by a review by the National Security Council or a committee of the National Security Council designated by the President for that purpose. Such review shall note the views of each member of the National Security Council or committee thereof. No decision or recommendation to the President relating to a special activity may be made by the National Security Council or a committee thereof unless the following officers, or if unavailable their representatives, were present: The Secretary of Defense, the Secretary of State, Attorney General, and the Director of National Intelligence.

(c) The President shall formulate guidelines for the conduct of special activities. The House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence shall be informed of such guidelines under Sec. 142.

(d) Any ongoing special activity which lasts more than a year or which is substantially changed in form or purpose must be reaffirmed by the President under subsection (a) and reviewed by the National Security Council or a committee thereof under subsection (b).

#### Periods of Hostilities

Sec. 224. During a period of war declared by Congress or during any period beginning on the day on which United States forces are introduced into a situation which requires a report from the President to the Congress under the War Powers Resolution, 87 Stat. 555, and ending on the last day such forces are authorized to be in such situation as provided by the War Powers Resolution, the President may waive the provisions of Sec. 222 (a) and authorize the Department of Defense to conduct special activities in furtherance of the aims of such war or introduction of United States forces.

Authorization for Intelligence Activities  
Involving Substantial Risks

Sec. 225. Any foreign intelligence, counterintelligence or counterterrorism activity of the United States that involves substantial risks or substantial consequences in the event of disclosure shall require authorization by the President. The President shall establish procedures for the approval of such activities which shall require review by the National Security Council or a committee thereof and which may require findings by the President, the National Security Council, a committee thereof, the Director of National Intelligence, the head of an entity of the intelligence community, or by any other official.

Congressional Notification

Sec. 226. All intelligence activities which require authorization or reaffirmation by the President shall be considered significant anticipated activities for the purpose of the requirement of Section 142 of this Act.

[Assassinations will be prohibited by criminal statute elsewhere in this bill.]